IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.MC.No. 3777 of 2006()

AGAINST THE ORDER IN & CMP.4210/2006 IN
CMP.4281/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAPPANA
CRIME NO.230/2006

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PETITIONER: PETITIONER IN CMP 4281/06

SREERAG FINANCE, REPRESENTED BY PRINCE
M.BABY, MUZHUVANCHERY HOUSE, AYYAMPILLIKKARA.

BY ADV. SRI.JIJO PAUL

RESPONDENTS: STATE AND PETITIONER IN CMP 4210/06

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1. THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KATTAPPANA POLICE
STATION-THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

2. JULLY.V.S., VETTUKALLAMKUZHIYIL,
THANKAMANI P.O., IDUKKI DISTRICT.

BY ADV. SRI.S.SACHITHANANDA PAI
GOVERNMENT PLEADER SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3777 of 2006

Dated this the 8th day of January 2007

O R D E R

The petitioner claims to be a financier in respect of a vehicle. The second respondent herein is admittedly the registered owner of the vehicle. The second respondent complained to the police that a theft had taken place of the said vehicle. The police, in the course of the investigation, seized the vehicle. The second respondent applied for release of the vehicle under Section 451 Cr.P.C. His was the earlier application for release. Subsequently, the petitioner herein filed an application under Section 451 Cr.P.C for release of the vehicle to him. To a pointed query of this court, it is conceded that the petitioner has no case that the vehicle was seized from his possession by the police. However, he claims right to re-possess the vehicle in as much as there has been default in payment of instalment by the second respondent. Both petitions were simultaneously pending before the learned Magistrate. The learned Magistrate, without taking note of the pendency of the application filed by the petitioner, took up the petition filed by the second respondent for consideration and by Annexure A

order directed the release of the vehicle to the second respondent herein.

2. Later, it was brought to the notice of the learned Magistrate that the petition filed by the petitioner herein remains without disposal. When that petition came up for hearing, the learned Magistrate proceeded to pass Annexure B order. In as much as Annexure A order could not be reviewed by the learned Magistrate, sitting as a criminal court, the learned Magistrate proceeded to pass Annexure B order dismissing the petition filed by the petitioner.

3. The short grievance of the petitioner is that for an error committed by the court, he may not be forced to endure prejudice. Both petitions must have been disposed of together as the identical relief - release of the vehicle to the respective claimants under Section 451 Cr.P.C, was prayed.

4. I do not intend to express any opinion on merits but I am satisfied that the grievance of the petitioner is justified. Both petitions must have been disposed of together and simultaneously by the learned Magistrate.

5. What then is the best course that the court can now follow?

6. I am satisfied that both Annexure A and B orders can

be set aside and the learned Magistrate can be directed to dispose of both petitions together after giving the rival contestants opportunity to raise and substantiate their contentions and disprove the contentions of the adversary. Such direction shall satisfy the ends of justice eminently.

7. The vehicle is now with the second respondent. The second respondent can be permitted to keep the vehicle in his possession subject to fresh orders that will be passed by the learned Magistrate as indicated above. To that extent, Annexure A order though set aside as a final order shall be reckoned as an order regarding temporary release of the vehicle, till both petitions are disposed of afresh.

8. In the result, this Criminal Miscellaneous Case is allowed in part to the extent indicated above.

9. Both parties shall appear before the learned Magistrate on 22/01/2007 for fresh disposal of the petitions. Needless to say, this order shall not in any way fetter the rights of both contestants to advance their respective contentions before the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006